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No. 76-1700

# In the Supreme Court of the United States

OCTOBER TERM, 1977

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PEOPLE OF THE STATE OF ILLINOIS, ET AL., PETITIONERS

*v.*

INTERSTATE COMMERCE COMMISSION, ET AL.

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

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## BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-10a) is not yet reported. The orders of the Interstate Commerce Commission in Finance Docket No. 26745, *The Baltimore and Ohio Railroad Company Abandonment Between Coal Shaft and Beardstown, Illinois* (Pet. App. 14a-48a) are not reported.

### JURISDICTION

The judgment of the court of appeals (Pet. App. 11a) was entered on March 23, 1977. A petition for rehearing was denied on April 22, 1977 (Pet. App. 12a). The petition for a writ of certiorari was filed on May 31, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether the Interstate Commerce Commission abused its discretion in permitting a railroad to abandon a 43-mile segment of rail line without consolidating the proceeding with separate applications seeking the abandonment of other, economically distinct segments of rail line.

## STATEMENT

Petitioners seek review of a decision affirming orders of the Interstate Commerce Commission authorizing the Baltimore and Ohio Railroad Company ("B&O") to abandon 43.7 miles of railroad line between Beardstown and Coal Shaft, Illinois.

B&O operates a 228-mile line of track running in a southeasterly direction from Beardstown, Illinois, on the Illinois River to Shawneetown, Illinois, on the Ohio River. The line has a northern, middle, and southern segment (Pet. App. 19a).[1]

B&O filed an abandonment application for the northern segment on August 13, 1971, and for the southern segment on December 22, 1971. Both applications were assigned to the same Administrative Law Judge ("ALJ").

[1]The Beardstown-Coal Shaft line (northern segment) proceeds 43.7 miles from Beardstown to the western outskirts of Springfield. Approximately five miles of Chicago and Illinois Midland track and joint Illinois Central B&O track proceed through Springfield, connecting the Beardstown-Coal Shaft line and Sangamon Junction. At Sangamon Junction, the B&O line divides, one line running east to Indianapolis, the other running approximately 111 miles southeast from Sangamon Junction to Flora (middle segment) and then some 73 miles from Flora to Shawneetown (southern segment). The St. Louis-Baltimore main line of the B&O intersects the middle and southern segments at Flora (Pet. App. 2a, 19a).



who scheduled separate hearings for each application. During the hearings on the southern segment in June 1972, B&O counsel announced that a further application was to be filed seeking abandonment of the middle segment, but he subsequently stated that this representation was incorrect because the carrier's management had not yet decided whether to seek abandonment of the middle segment. A separate hearing on the northern segment was conducted as scheduled in July 1972 (Pet. App. 2a, 16a).

In June 1972, petitioners had moved that the two pending proceedings and the proposed middle segment proceeding be consolidated (Pet. App. 16a).

In January 1973, the ALJ denied consolidation of the two proceedings before him (Pet. 17a). He also issued separate reports on the northern and southern segments, recommending that the Commission authorize abandonment of the northern segment but not the southern segment (Pet. App. 2a, 14a-32a).

Final action on the ALJ's initial reports was held in abeyance by the Commission pending the outcome of an appeal before the United States Court of Appeals for the Second Circuit, relating to procedures applicable to the preparation of environmental impact statements by the Commission (Pet. App. 2a-3a).[2]

In March 1975, B&O applied for authority to abandon the middle segment. Petitioners moved to consolidate the northern and southern segment proceedings with the middle segment proceeding. The motion was denied (Pet.

[2]*Harlem Valley Transportation Association* v. *Stafford*, 500 F. 2d 328 (C.A. 2). Petitioners raised such an issue below (Pet. App. 7a-10a), but have not presented it here.

App. 33a-34a).[3] The Commission's Review Board No. 5 thereafter affirmed and adopted the report of the ALJ authorizing abandonment of the northern segment line. Division 3 of the Commission denied reconsideration (Pet. App. 35a-40a).

On petition for review, the court of appeals affirmed, rejecting petitioners' contention that the Commission should have consolidated the three proceedings or otherwise have considered the effect abandoning the northern segment would have on the middle and southern segments. The court held that the "choice of whether or not to consolidate related proceedings is 'a matter for administrative discretion,'" and that "both the ALJ's decision and the Commission's 1975 order denying consolidation after B&O sought to abandon the middle segment set out sound reasons for denying consolidation, and it is not our function to second-guess these determinations" (Pet. App. 3a-4a).

The court distinguished *American Trucking Associations, Inc.* v. *United States*, 326 U.S. 77, on the ground that its facts "made a stronger case for consideration of segment interrelationships * * * than is present in this abandonment proceeding" (Pet. App. 5a). The court further determined that even if consideration of possible interrelationships was required, the requirement was met because (1) the ALJ's finding that the northern and southern segment proceedings were "clearly identifiable and separate" had substantial support in the record; (2) there was no requirement that the Commission reopen the northern segment proceeding just because B&O

[3]B&O's application for authority to abandon the southern segment was subsequently dismissed when the Commission approved acquisition of that segment by another company (Pet. App. 49a-77a). *Prairie Trunk Railway - Acquisition and Operation*, 348 I.C.C. 832. The middle segment proceeding is still pending before the Commission.



ultimately filed an abandonment application on the middle segment in 1975; and (3) the ALJ had before him evidence that most of the traffic over the northern segment (which was light to begin with) did not move over the middle or southern segments (Pet. App. 4a-7a).

## ARGUMENT

As noted by the court below, "petitioners do not directly attack the substantive conclusion of the ICC that the public convenience and necessity permit abandonment of the northern segment" (Pet. App. 3a). Their sole contention in this Court is that the Commission "considered the northern segment application in a vacuum" because it failed to make specific findings concerning the impact of the northern segment abandonment on the continued viability of the middle and southern segments (Pet. 4). The extent to which certification or abandonment of particular segments of a rail or trucking line affects service on other segments, however, is a factual matter that varies from case to case. Cf. *American Trucking Associations, Inc.* v. *United States*, *supra*. The court of appeals thoroughly canvassed the record in this case, and there is no reason for this Court further to examine the essentially factual conclusion that there was ample ground for the Commission to decide the application for abandonment of the northern segment independently of the other segments.

As the court of appeals ruled (Pet. App. 5a-7a):

> With reference to the only two abandonment applications pending at the time, covering the northern and southern segments, the same ALJ heard both proceedings and was thoroughly familiar with the comparative considerations underlying both. He concluded that "[e]ach of the proceedings is clearly identifiable and separate," and that "the shippers

and their interest are different." We have reviewed the record, and we surely cannot say that these findings lack substantial support in the evidence. In this regard, we think it is significant that the record shows that the preponderance of northern segment traffic moved east from Sangamon Junction to Indianapolis and did not travel on either the middle or southern segments, and that of more than 2500 cars moving over either the northern or southern segments in 1971, only 14 moved on both segments. We also note that the ALJ found the conditions pertaining to the northern and southern segments to be so different that he recommended granting the former and denying the latter application for abandonment.

* * * In any case, the ALJ had before him evidence that most of the northern segment traffic travelled on east to Indianapolis rather than southeast over the middle and/or southern segments. Because the northern segment traffic was light to begin with, we surely cannot say that the ALJ's later-adopted report inadequately considered appropriate interrelationships.

As shown by the foregoing, the Commission gave appropriate consideration to the relationship of traffic on the northern segment to traffic on the middle and southern segments. Thus, petitioners err in contending (Pet. 8-11), that the Commission is allowing the piecemeal abandonment of rail lines one segment at a time.

Moreover, consolidation of the northern, middle, and southern segment proceedings was neither necessary nor practical. B&O's application for abandonment of the middle segment was not filed until 1975, some two years after the ALJ's reports on the northern and southern segments. The court of appeals correctly noted that it was



not "incumbent on the ALJ to forecast B&O's intentions regarding the middle segment in 1972 and to design his hearing schedule and evidentiary rulings on the basis of the then unfounded assumption that abandonment was in the works" (Pet. App. 6a). After the middle segment application was filed in 1975, the decision whether the other proceedings should be reopened for consolidation was a matter of administrative discretion. In light of the evidence that the segments are economically distinct, the court of appeals correctly concluded that this discretion had not been abused (Pet. 4a).

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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